



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Overruled by U-603

insofar as it conflicts.

State Board of Education
Austin, Texas

Gentlemen:

Attention: Mr. Matt Graham
Traveling Auditor

Opinion Number 0-5715

Re: Under the given facts, does
the State Board of Education
have the authority to approve
the application for the pre-
payment of bonds issued to
Mattson RHSD No. 48, Haskell
County?

We are in receipt of your letter requesting an opinion
from this department, which letter is as follows:

"On April 24, 1943, the State Treasurer
received an application from Mattson RHSD No.
48 (Haskell County) for permission to retire
\$600 in bonds out of its 9/1/37 Issue on Sept-
ember 1, 1943, the interest paying date, in
accordance with the provisions of Article
2787a, Revised Statutes of 1925.

"This office received from the State Treas-
urer a letter under date of October 21, 1943,
in which the application above described was
enclosed, stating that the application was filed
in that office in error and asking that it be
submitted to the State Board of Education for
approval.

"The application was considered by the State Board of Education in session November 6th, and in view of the fact that the money for the retirement of the bonds was not in the office of the State Treasurer on September 1st, the Board wishes to be advised whether it has authority to approve the application for the prepayment of the bonds as of that date."

Replying to the above question, you are advised that Article 2787a, Vernon's Statutes, reads as follows:

"The State Board of Education may authorize the trustees of any common school district or of any independent school district of this State to pay off and discharge, at any interest paying date whether the bonds are matured or not, all or any part of any bonded indebtedness now owned or hereafter to be owned by the State Permanent School Fund, outstanding against any common school district, or any independent school district in this State.

"It shall be the duty of the school trustees of any common school district, or any independent school district of this State desiring to pay off and discharge any bonded indebtedness now owned or hereafter to be owned by the Permanent School Fund of this State, outstanding against such district or districts, before maturity thereof, to make direct application in writing to the State Board of Education at least thirty days before any interest paying date on said bonds, making known to said State Board of Education the desire of said trustees to pay off and discharge said bonded indebtedness, or any part thereof, describing said bonds or the part thereof that the trustees desire to pay off and discharge; and it shall be the duty of the State Board of Education upon receipt of such application to act thereon in such manner as they deem best and notify the applicant

or applicants whether the application is refused or granted in whole or in part; provided, that only such tax money as has been collected by virtue of tax levies made for the specific purpose of providing a sinking fund and paying interest on the particular bonds to be redeemed shall be expended in the redemption, taking up, or paying off of such bonds as provided in this Act; unless said bonds are being redeemed for the purpose of being refunded; and the application of the board of trustees of any common or independent school district desiring to retire bonds as herein provided shall include an affidavit to that effect in their application; and provided further, that it shall be unlawful for any person upon whom any duty rests in carrying out the provisions of this law to give or receive any commission, premium, or any compensation whatever for the performance of such duty or duties.

"The provisions of this Act shall apply also to the governing boards of all cities, counties and political subdivisions in this State whose bonds are owned or may hereafter be owned by the Permanent School Fund of the State."

From your statement of facts it appears that the application to the State Board of Education was mailed to the State Treasurer while the law requires the governing body of the school district "to make direct application in writing to the State Board of Education at least thirty days before any interest paying date on said bonds * * *." The fact that no such application in writing was made to the State Board of Education thirty days prior to September 1, 1943, the interest paying date, and the further fact that no funds had been sent to the State Treasurer on or prior to said date with which to redeem the bonds, constitute such failure on the part of the district to comply with the provisions of Article 2787a, as in our opinion, would deprive the Board of Education of the power to approve the application. An application sent to the State

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Treasurer is not an application to the State Board of Education.

APPROVED DEC 1, 1943

Very truly yours

WESLEY A. HICKS
ATTORNEY GENERAL

ATTORNEY GENERAL OF TEXAS

BY

G. P. Gibson
Assistant

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OK: T.R.D.M.

APPROVED
OPINION
COMMITTEE
BY *BUT*
CHAIRMAN